

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLANT**

74-1065

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IN THE
United States Court of Appeals P/S
FOR THE SECOND CIRCUIT

No. 72-1433

UNITED STATES OF AMERICA

Plaintiff-Appellee,

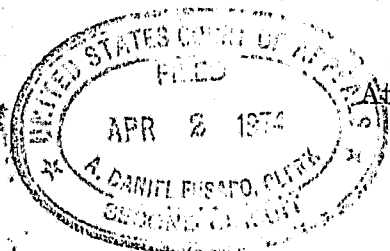
— against —

GENERAL DOUGLAS MacARTHUR SENIOR
VILLAGE, et al.,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

**BRIEF FOR THE DEFENDANT-APPELLANT
ESTATE OF DAVID RAND**



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Question Presented

Does a tax lien purchaser of unpaid local taxes have the right to reimbursement of the purchase price in the event the lien is declared unenforceable by reason of improper and irregular assessment.

Statement of the Case

The Defendant-Appellant appeals from a final judgment rendered after a motion for summary judgment by the several municipality-defendants. The defendant-appellants had cross-claimed in their answer against the several co-defendants for reimbursement of the purchase price of the tax lien which was sold for the unpaid taxes. A prior decision of this court held the liens in question were invalid in that a mortgage held by the United States of America was a prior and superior lien (United States v. General Douglas MacArthur Senior Village Inc. 470 F² 675). The liens sold by the defendant Village of Hempstead amounted to \$21,843.75 and that sold by the defendant County of Nassau amounted to \$57,354.72.

Argument

The defendant-appellant contends that the court below erred in its determination that the act of assessing property on which the United States holds a mortgage is regular and valid. In so holding, the court removed the protection afforded tax lien purchasers under Section 5-68.0 of the Nassau County Administrative Code and the applicable provisions of Section 1464 of the Real Property Tax Law of the State of New York. These sections read as follows:

**"5-68.0 REIMBURSEMENT FOR INVALID
OR IRREGULAR CERTIFICATES OF SALE.**

a. When any holder of tax liens shall be unable to recover or retain possession of any real estate affected by the tax lien, by reason of any irregularity or error in:

1. The assessment of real property;
2. The levying of any tax thereon; or

3. The proceedings for the collection of any tax, the county treasurer, with the approval of the county comptroller, shall reimburse such holder...."

"Section 1464(6) In the event that any grantee under such conveyance is unable to obtain possession of the real property conveyed to him by reason of any error or irregularity in the assessment thereof, in the levying of a tax, or in any proceedings for the collection of any tax, the board of trustees shall refund to the purchaser the money so paid with interest, the same to be audited and paid as other village charges.

POINT I

The act of assessment by the several municipalities was in error and invalid.

Simply stated, the municipality co-defendants have the duty, when assessing real property within their boundaries, of properly placing only those properties on the roll which are subject to an enforceable lien. In the event of their failure to do so, the inability of the municipality or its assigns, the defendant-appellant in this case, to enforce the lien, must be borne by the taxing district at large.

A taxing authority may not contend that although it made a mistake in taxing the property, the holder of the lien must bear the loss. At the very least, it must be held that such action is irregular. This property should not have been taxed. The mortgage of the United States appeared of record, having been recorded on the 9th day of May 1966 in liber 7910 of mortgages at page 458.

Section 422 of the Real Property Tax Law of the State of New York provides that property used exclusively to provide housing for aged persons and financed by federally-aided mortgages as defined in Article eleven of the Private Housing Finance Law shall be exempt from taxation.

This provision became effective on June 22, 1968, prior to the date of the assessment herein.

Where property is wholly exempt, an assessing officer has no jurisdiction and any assessment imposed is illegal. (Williams Institutional Colored Methodist Episcopal Church v. City of New York 275 A.D. 311; Elmhurst Insurance Co. v. City of New York 213 N.Y. 87; Westchester County v. Town of Harrison 85 NYS² 374.)

CONCLUSION

The judgment by the lower court should be reversed and summary judgment granted the defendants Rand, Barkus and Hershkowitz against the Village of Hempstead and County of Nassau on their cross claim.

Respectfully submitted,

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Charles A. Arcouet, being duly sworn, deposes and says:
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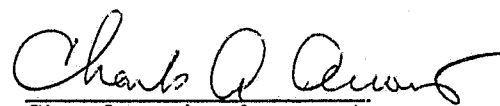
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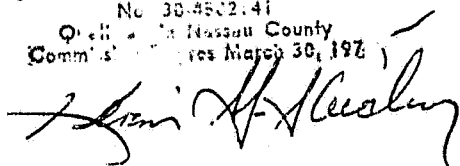
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